

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

**GEORGE H. BOWMAN
LORIE A. BOWMAN,**

Civil Case No. 10-1160-KI

Plaintiffs,

OPINION AND ORDER

vs.

**RECONSTRUCT COMPANY, N.A.,
BAC HOME LOANS SERVICING, L.P.,
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., HOMESTREET BANK,
FEDERAL NATIONAL MORTGAGE ASSOCIATION,**

Defendants.

George H. Bowman
Lorie A. Bowman
11487 S. E. 45th Avenue
Milwaukie, Oregon 97222

Pro Se Plaintiffs

Stephen P. McCarthy
Pilar C. French
Lane Powell P.C.
601 SW Second Avenue, Suite 2100
Portland, Oregon 97204-3158

Attorneys for Defendants ReconTrust Company, NA;
BAC Home Loans Servicing, LP; and Mortgage
Electronic Registration Systems, Inc.

KING, Judge:

Plaintiffs George H. Bowman and Lorie A. Bowman filed a Request for a Temporary Restraining Order (“TRO”), Pending a Hearing for a Permanent¹ Injunction (#25) seeking to stop “the purported illegal completion of the sale of Plaintiff’s residence.” Mot. at 1. For the following reasons, and for the reasons stated on the record at the October 14 and October 28, 2010 hearings, I grant plaintiffs’ motion as to defendant Federal National Mortgage Association (“FNMA”) only. I enjoin FNMA from proceeding with the Forcible Entry and Detainer (“FED”) in Clackamas County Circuit Court, Case No. FE101695, to evict plaintiffs from their residence of 11487 SE 45th Ave., Milwaukie, Oregon. The TRO shall remain in effect until at least November 12 at 1:00 pm, at which time I have set a preliminary injunction hearing.

The TRO I entered on October 14, 2010, and contained in the written Opinion and Order of October 15, 2010, is dissolved.

BACKGROUND

Plaintiffs bring suit against ReconTrust Company, NA (“ReconTrust”), BAC Home Loan Servicing, LP (“BAC”), Mortgage Electronic Registration Systems Inc. (“MERS”), and

¹The Court infers plaintiffs mean a “preliminary injunction.”

Homestreet Bank seeking to vacate the trustee's sale of their home that took place in July 2010.

The Court held a hearing on October 14, 2010 and learned that plaintiffs sought to enjoin the filing of any proceeding for FED until the Court issued a decision on the merits of their dispute. At that point, no FED proceeding had been filed. The Court granted the TRO, but noted FNMA is the purported titleholder following the foreclosure sale on July 21, 2010. The Court permitted plaintiffs to file an Amended Complaint and to seek a TRO enjoining FNMA from attempting to evict plaintiffs.

On October 18, 2010, plaintiffs amended their Complaint to add FNMA as a defendant. On or before October 21, 2010, FNMA filed an FED in Clackamas County Circuit Court, Case No. FE101695. The next day, plaintiffs filed this second request for a TRO.

LEGAL STANDARDS

The standard for obtaining a temporary restraining order is generally the same as the standard for obtaining a preliminary injunction. The party moving for a preliminary injunction must show "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural Resources Def. Council, Inc., 129 S. Ct. 365, 374 (2008).

DISCUSSION

For the reasons stated on the record, particularly with respect to MERS' involvement in transferring the Deed of Trust without having authority to transfer the Note, I find plaintiffs are likely to succeed on the merits. Plaintiffs are also likely to experience irreparable harm if they are evicted from their home. Accordingly, I enjoin FNMA from proceeding with the FED in

Clackamas County Circuit Court, Case No. FE101695, to evict plaintiffs from their residence of 11487 SE 45th Ave., Milwaukie, Oregon. The TRO shall remain in effect until at least November 12 at 1:00 pm, at which time I have set a preliminary injunction hearing.

Pursuant to Federal Rule of Civil Procedure 65(c), I have considered the issue of security. I order plaintiffs to pay \$1,000 a month until the TRO (or preliminary injunction, if one is issued) is dissolved. The total amount plaintiffs pay during this time is to be credited against any amount they are deemed to owe. Once FNMA appears in the case, and I confirm that it is the entity entitled to payment on the underlying debt, plaintiffs' monthly payments must commence.

CONCLUSION

For the foregoing reasons, plaintiffs' Request for a Temporary Restraining Order, Pending a Hearing for a Permanent Injunction (#25) is granted. I enjoin FNMA from proceeding with the FED in Clackamas County Circuit Court, Case No. FE101695, to evict plaintiffs from their residence of 11487 SE 45th Ave., Milwaukie, Oregon. The TRO shall remain in effect until at least November 12 at 1:00 pm, at which time I have set a preliminary injunction hearing.

The TRO I entered on October 14, 2010, and contained in the written Opinion and Order of October 15, 2010, is dissolved.

Dated this 28th day of October, 2010.

/s/ Garr M. King
Garr M. King
United States District Judge